How The Courts Are Using The Second Amendment Against Us

The Declaration of Independence and the Second Amendment share something in common; they both have preambles. The Second Amendment is the only amendment enumerated in the Bill of Rights that contains a stated purpose, ***"A well regulated Militia, being necessary to the security of a free State..."*** This is a *preamble*, an *introduction*, a *preface*, a "*for this reason*," a "*whereas*,"--not a "*therefore*."

"No other amendment has its own preface." William & Mary Rev, Guns, Words, and Constitutional Interpretation.

"What is special about the Amendment is the inclusion of an opening clause--a preamble, if you will...No other clause is a part of any other Amendment." L. Tribe, American Constitutional Law.

"Many gun control advocates argue that the unique 13-word preamble stipulates that amendment's purpose in a way that severely narrows constitutional protection of gun ownership." George F. Will, America's Crisis of Gunfire.

However, numerous court decisions declaring that the individual right to own firearms is not guaranteed by the Second Amendment are based on the preamble, not the Right itself, which reads, ***"...the right of the people to keep and bear arms, shall not be infringed."*** We don't have statistics in front of us, but it's a safe bet that virtually all decisions handed down by the courts restraining individual firearms ownership are based on the *preamble*, i.e., the introduction--and introductions are *not* law--introductions are *not* rights.

Cases in point: ***"...the claimant of Second Amendment protection must prove that his or her possession of the weapon was reasonably related to a well regulated militia."*** [Preamble]. ***Considering this history, we cannot conclude that the Second Amendment protects the individual possession of military weapons***. [Preamble] ***The rule emerging from Miller is that, absent a showing that the possession of certain weapons has "some reasonable relationship to the preservation or efficiency of a well regulated militia,"*** [Preamble] ***the Second Amendment does not guarantee the right to possess the weapon,"*** [based on the preamble]. United States v. Hale. (8th. Cir. 1992).

"Thus, the clauses of the amendment are bound together. The right of an individual is dependent upon a role in rendering the militia effective." [Preamble] State v. Skinner (1973). Here the court maintains that the preamble and right are inseparable and of equal value, which is total nonsense, and, as we'll prove, runs contrary to the rules of interpretation. Have you ever

heard of someone being indicted, convicted, and sent to prison for violating the *preamble* of a statute but not the statute itself? That's precisely what the courts are doing with gun owners in regards to the Second Amendment.

"Since the Second Amendment right "to keep and bear arms" applies to the right of the state to maintain a militia, [preamble] ***and not to the individual's right to bear arms,*** [court places the preamble above the right] ***there can be no serious claim to any express constitutional right of an individual to possess a firearm."*** [Based on the preamble] Stevens v. United States, (U.S. Court of Appeals, 6th Circuit).

And in the well-known United States v. Miller, the court said, ***"In the absence of any evidence tending to show that possession or use of a "shotgun having a barrel of less than eighteen inches in length" at this time has some reasonable relationship to the preservation of efficiency of a well regulated militia*** [preamble], ***we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment*** [preamble] ***or that its use could contribute to the common defense."*** [Preamble].

Chief Justice Warren Burger, when asked for his opinion on the Second Amendment, said it was ***"...one of the greatest pieces of fraud, I repeat the word 'fraud' on the American public by special interest groups that I've ever seen in my life time.***

The real purpose of the Second Amendment was to ensure that state armies--the militias--[preamble] ***would be maintained for the defense of the state. The very language of the Second Amendment*** [referring to the preamble] ***refutes any argument that it was intended to guarantee every citizen an unfettered right to any kind of weapon he or she desires."***

Mr. Burger is wrong. The greatest fraud, I repeat the word 'fraud,' on the American public is being perpetrated by our judiciary in their use of the preamble, which is *not* a right, *not* a law, *not* a code, *not* a statute, when deciding a Second Amendment issue.

There is only one legitimate reason for the courts to refer to a preamble when interpreting a law or right, and that's when the law or right in question is vague and the preamble is needed for clarification. However, a preamble is *always* secondary and can never supplant the right or law in question. A preamble is, ***"A preface, an introduction or explanation of what is to follow: That clause at the head of acts of congress or other legislatures which explains the reasons why the act is made. Preambles are also frequently put in contracts, to explain the motives of the contracting parties. A preamble is said to be the key of a statute, to open the minds of the makers as to the mischief's which they are to be remedied, and the objects which are to be accomplished by the provisions of the statutes. It cannot amount, by implication, to enlarge*** [or "infringe"] ***what is expressly given."*** The Lectric Law Library's Lexicon.

Cases in point: ***"The body of the act may even be restrained by the preamble, when no inconsistency or contradiction results, ...where the intention of the Legislature is clearly expressed in the*** [body], ***the preamble shall not restrain it, although it be of much narrower import."*** A Treatise on the Rules Which Govern the Interpretation and of Statutory and Constitutional Law, Theodore Sedgwick. 1857, pg. 55.

Our judicial system has handed down *"inconsistent or contradictory results"* on a regular basis concerning the Second Amendment because of their *inclusion* of the preamble in their decisions. Many times, if not always, allowing it to take preeminence over the right itself. Gun grabbers *totally* rely on the preamble to *"restrain"* the Second Amendment at every turn. If the preamble read; "In order to ensure a fresh supply of venison, the right of the people to keep and bear arms shall not be infringed," the courts would argue that supermarkets always have a fresh supply of meat on hand and restrict firearms ownership on *that* basis. It's the courts *illegal* use of the preamble that's causing all the grief for gun owners because it's difficult, if not impossible, to misinterpret ***"...the right of the people to keep and bear arms shall not be infringed"*** That's why the judiciary avoid it and constantly addresses the preamble.

"As showing the inducement to the acts, [the preamble] ***may have a decisive weight in a doubtful case. But where the body of the statute is distinct, it will prevail over a more restrictive preamble."*** Commentaries on the Written Laws and Their Interpretation. Joel P. Bishop, pg. 48, (1882), .

"In the laws of England, in doubtful cases recourse may be had to the preamble; but where the terms of the enacting clause are clear and positive, the preamble cannot be resorted to." Fortunatus Dwarris, A General Treatise of Statutes, pg. 504, (2d ed, 1848).

What's vague about ***"...the right of the people to keep and bear arms, shall not be infringed?"*** This statement is unequivocal and needs no further clarification. Therefore, there's absolutely no legal justification for the courts to refer to the preamble when deciding a case! And it's blatantly illegal for the courts to place an introduction to a right over the right itself. It's a mystery as to how the courts have perpetrated this fraud for so many years. Laws covering the militia can be found in the Militia Act of May 8, 1792 and in 10 U.S.C. 311, but as it appears in the 2nd. Amendment, it's just an introduction and carries no legal authority except for clarification purposes only.

Justice Joseph Story wrote in Rules of Interpretation, ***"Where the words are plain and clear, and the sense distinct and perfect arising on them, there is generally no necessity*** to have ***recourse to other means of interpretation. It is only when there is some ambiguity or doubt arising from other sources that interpretation has its proper office."*** Story also said that a preamble ***"...is properly resorted to, where doubts or ambiguities arise upon the words of the enacted part,*** [but] ***"...never can be resorted to, to enlarge the powers confided to the general government. It can never amount, by implication, to an enlargement of any power expressly given. It can never be the source of any implied power..."*** Try telling that to our courts.

The "collective right" argument is another favorite of the gun-grabbers. It first got its start in a Kansas Supreme Court decision back in 1905. Corrupt judges, prosecutors and legislators have been tripping over themselves to jump on that band wagon ever since. Again, the Kansas decision was based on the preamble.

Any lawyer who is defending a Second Amendment issue should make it *explicitly* clear to the court that *any* reference to the preamble of the Second Amendment is unnecessary based on the clear language cited in the right itself. Explain the rules of interpretation quoted earlier (find as many quotes as you can) and force the courts to prove that there's something ambiguous in the wording of the Second Amendment that requires reference to the preamble for clarification.

He should show that a preamble is just that--a preamble, an introduction, and a firearms issue cannot be judged by an introduction. This will limit the courts (if successful) and if any judge or prosecutor claims that he doesn't understand the meaning of ***"...the right of the people to keep and bear arms shall not be infringed,"*** will prove himself an idiot.

Explain to the court that judicial giants of the past, men of renown, revered for their judicial excellence of mind would *never* resort to a preamble--that's for judicial Homer Simpsons' --someone who has a poor command of the Queen's English. Set the stage to make the judge or prosecutor look like a complete ass if they utter so much as a word in reference to the preamble. If they do--they are.

In closing it should be mentioned that if the courts used preambles in other areas of law when deciding a case in the same manner as they have against the Second Amendment the judge would be kicked off the bench--it simply wouldn't be tolerated. And gun owners in America shouldn't tolerate it either.

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